

1 what specific injury Plaintiff suffered because of that person's conduct. See
 2 Rizzo v. Goode, 423 U.S. 362, 371-72, 377 (1976). If the person named as a
 3 defendant was a supervisory official, Plaintiff must either state that the
 4 defendant personally participated in the constitutional deprivation (and tell the
 5 Court the five things listed above), or Plaintiff must state, if he can do so in
 good faith, that the defendant was aware of the similar widespread abuses, but
 with deliberate indifference to Plaintiff's constitutional rights, failed to take
 action to prevent further harm to Plaintiff (and tell the Court some facts to
 support this claim). King, 814 F.2d at 568; See Monell v. New York City
Department of Social Services, 436 U.S. 658, 691 (1978).

6 Plaintiff must repeat this process for each person he names as a
 7 defendant. If Plaintiff fails to affirmatively link the conduct of each named
 8 defendant with the specific injury suffered by Plaintiff, the claim against that
 9 defendant will be dismissed for failure to state a claim. Conclusory allegations
 10 that a defendant or group of defendants have violated a constitutional right will
 11 not suffice and will be dismissed. Any amended complaint filed by Plaintiff
 12 must be retyped or rewritten in its entirety on the current, Court-approved form
 13 included with this Order, must present each issue or claim in a separate count,
 14 and may not incorporate any part of the original Complaint by reference. The
 amended complaint must conform to the requirements of Rule 8(a) and (e)(1)
 of the Federal Rules of Civil Procedure, and all applicable Local Rules. If
 Plaintiff cannot fit all of his supporting facts in favor of a particular count on
 the Court-approved form, then he may continue on an attachment, but each
 matter on any attachment must be clearly referenced to a particular count on
 the Court-approved form, and be numbered appropriately. Plaintiff may only
 address one (1) issue in each count.

15 To the extent that Plaintiff desires to allege more than three (3) counts
 16 in an amended complaint, he should photocopy an extra page of page six (6)
 17 of the Court-approved form for each additional count, and after renumbering
 the count and page as appropriate, use the extra page or pages to present his
 other claim or claims.

18 (Doc.# 8 at 8-9.)

19 In his Second Amended Complaint, Plaintiff alleges multiple claims in each of his
 20 three counts rather than setting forth only one claim per count and alleging more counts. In
 21 Count I, Plaintiff alleges constitutional violations regarding (1) conditions of confinement,
 22 including overcrowding, lack of sanitation, lack of recreation; (2) diet; (3) medical care; (4)
 23 retaliation; and (5) failure to protect. In Count II, Plaintiff alleges claims regarding medical
 24 care and retaliation. In Count III, Plaintiff alleges (1) denial of access to the courts; (2)
 25 improper handling of his legal mail; and (3) retaliation. Because it appears that Plaintiff
 26 could amend his Second Amended Complaint to only allege one claim per count, the Court
 27 will grant Plaintiff a final opportunity to amend.

28 Within 30 days, Plaintiff may submit a third amended complaint to cure the

1 deficiencies outlined above. The Clerk of Court will mail Plaintiff a court-approved form
 2 to use for a third amended complaint. Plaintiff must clearly designate on the face of the
 3 document that it is the "Third Amended Complaint." If Plaintiff fails to use the court-
 4 approved form, the Court may strike the amended complaint and dismiss this action without
 5 further notice to Plaintiff.

6 The third amended complaint must be retyped or rewritten in its entirety on the court-
 7 approved form and may not incorporate any part of the prior complaints by reference. In
 8 addition, in the third amended complaint, **Plaintiff must comply with the instructions**
 9 **quoted above and, in particular, Plaintiff must allege *only* one claim per count and *no***
 10 **count may exceed two pages. For example, Plaintiff should include his allegations**
 11 **regarding his conditions of confinement in one count, allegations concerning medical**
 12 **care in another, allegations concerning retaliation in a third and so on. The failure to**
 13 **comply with these instructions will result in the dismissal of this action.**

14 An amended complaint supersedes prior complaints. Ferdik v. Bonzelet, 963 F.2d
 15 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542, 1546
 16 (9th Cir. 1990). After amendment, the Court will treat prior complaints as nonexistent.
 17 Ferdik, 963 F.2d at 1262. Any cause of action that was raised in prior complaints is waived
 18 if it is not raised in an amended complaint. King v. Atiyeh, 814 F.2d 565, 567 (9th Cir.
 19 1987).

20 **II. Plaintiff's Motion for a Typewriter**

21 Plaintiff asks the Court to order the Arizona Department of Corrections ("ADC") to
 22 permit him to purchase a clear-case typewriter. (Doc.# 9.) The only reasons given by
 23 Plaintiff are that he has poor penmanship and that he has hired other inmates to re-write his
 24 pleadings who charge "a substantial fee to re-write legal briefs and pleadings." (Id. at 2.)
 25 Plaintiff asserts that his ability to purchase a typewriter will benefit the Court by decreasing
 26 the time necessary to read through his lengthy filings.² (Id. at 2-3.)

27
 28 ² It is the volume and vagueness of Plaintiff's allegations, rather than the penmanship,
 that have been time-consuming.

As an initial matter, ADC is not a party to this action. Injunctive or restraining orders are “binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order.” Fed.R.Civ.P. 65(d). Further, the Court declines to interfere with ADC policies and procedures on the grounds asserted by Plaintiff. Moreover, Plaintiff’s compliance with the instructions herein will reduce the lengthiness of Plaintiff’s filings. Plaintiff’s motion will be denied.

III. Warnings

A. Release

Plaintiff must pay the unpaid balance of the filing fee within 120 days of his release. Also, within 30 days of his release, he must either (1) notify the Court that he intends to pay the balance or (2) show good cause, in writing, why he cannot. Failure to comply may result in dismissal.

B. Address Changes

Plaintiff must file and serve a notice of a change of address 10 days before the move is effective, if practicable. See LRCiv 83.3(d). Plaintiff must not include a motion for other relief with a notice of change of address. Failure to comply may result in dismissal.

C. Copies

Plaintiff must submit an additional copy of every document that he files for use by the Court. See LRCiv 5.4. Failure to comply may result in the filing being stricken without further notice to Plaintiff.

D. Possible “Strike”

Because prior complaints have been dismissed for failure to state a claim, if Plaintiff fails to file a third amended complaint correcting the deficiencies identified in this Order, the dismissal will count as a “strike” under the “3-strikes” provision of 28 U.S.C. § 1915(g). Under the 3-strikes provision, a prisoner may not bring a civil action or appeal a civil judgment *in forma pauperis* under 28 U.S.C. § 1915 “if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a

1 court of the United States that was dismissed on the grounds that it is frivolous, malicious,
2 or fails to state a claim upon which relief may be granted, unless the prisoner is under
3 imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

4 **E. Possible Dismissal**

5 Plaintiff is warned that failure to timely comply with every provision of this Order,
6 including these warnings, may result in dismissal of this action without further notice. See
7 Ferdik, 963 F.2d at 1260-61 (a district court may dismiss an action for failure to comply with
8 any order of the Court).

9 **IT IS ORDERED:**

10 (1) The Second Amended Complaint (doc.# 11) is **dismissed** for failure to comply
11 with the Court’s prior Order in part. Plaintiff has **30 days** from the date this Order is filed
12 to file a third amended complaint in compliance with this Order.

13 (2) If Plaintiff fails to file a third amended complaint within 30 days, the Clerk of
14 Court must, without further notice, enter a judgment of dismissal of this action with prejudice
15 that states that the dismissal counts as a “strike” under 28 U.S.C. § 1915(g).

16 (3) Plaintiff’s motion for a typewriter is **denied**. (Doc.# 9.)

17 (4) The Clerk of Court must mail Plaintiff a court-approved form for filing a civil
18 rights complaint by a prisoner.

19 DATED this 7th day of August, 2006.

20
21 
22 Stephen M. McNamee
23 United States District Judge
24
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28

**INFORMATION AND INSTRUCTIONS FOR A
PRISONER FILING CIVIL RIGHTS COMPLAINT
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

I. General Information About the Civil Rights Complaint Form:

A. The Form. The civil rights complaint form is designed to help prisoners prepare a complaint seeking relief for a violation of their federal civil rights. Local Rule of Civil Procedure 3.4(a) requires that prisoner civil rights complaints be filed on the court-approved form. Your complaint must be typewritten or legibly handwritten. All information must be clearly and concisely written, **only in the space provided on the form**. If needed, you may attach no more than fifteen additional pages of standard letter size paper to continue any part of the complaint. You must identify which part of the complaint is being continued and number all pages.

B. Your Signature. You must sign the complaint. Your signature constitutes a certificate that: 1) you have read the complaint; 2) to the best of your knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and law; and 3) it is not being filed for any improper purpose. Please review Rule 11 of the Federal Rules of Civil Procedure. Rule 11 provides for the imposition of sanctions if the complaint is signed in violation of the Rule.

C. The Filing Fee. You must pay the \$250.00 filing fee. If you are unable to pay the filing fee when the complaint is filed, you may request leave to proceed *in forma pauperis*. Please review the "Information for Prisoners Seeking Leave to Proceed with a (Non-Habeas) Civil Action in Federal Court *In Forma Pauperis* Pursuant to 28 U.S.C. § 1915" for more information.

D. Court Divisions. If you resided in Maricopa, Pinal, Yuma, La Paz, or Gila county when your rights were allegedly violated, you should file your complaint in the Phoenix Division of the court. If you resided in Apache, Navajo, Coconino, Mohave, or Yavapai county when your rights were allegedly violated, you should file your complaint in the Prescott Division of the court. If you resided in Pima, Cochise, Santa Cruz, Graham, or Greenlee county when your rights were allegedly violated, you should file your complaint in the Tucson Division of the court. See LRCiv 5.1(a) and 77.1(a).

You should mail THE ORIGINAL AND ONE COPY of your complaint with the \$250.00 filing fee or the application to proceed *in forma pauperis* to:

Phoenix & Prescott Divisions:

OR

Tucson Division:

U.S. District Court Clerk
U.S. Courthouse, Suite 321

U.S. District Court Clerk
U.S. Courthouse, Suite 1500

401 West Washington Street, SPC 10
Phoenix, Arizona 85003-2119

405 West Congress Street
Tucson, Arizona 85701-5010

E. Certificate of Service on Defendants. You must furnish the opposing party or their attorney with a copy of any document you submit to the court (except the initial complaint and application to proceed *in forma pauperis*). Pursuant to Rules 5(a) and (d) of the Federal Rules of Civil Procedure, each original document (except the initial complaint and application for leave to proceed *in forma pauperis*) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the opposing party or their attorney and the address to which it was mailed. Any document received by the court which does not include a certificate of service may be stricken. A certificate of service should be in the following form:

I hereby certify that a copy of the foregoing document was mailed
this ____ day of ____ (month) ____, (year) ____, to:

Name: _____

Address: _____

Attorney for Defendant(s)/Respondent(s)

(Signature)

F. Original and Judge's Copy. You must furnish an original and one copy of any document submitted to the court. You must furnish one additional copy to the clerk if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original.

G. Exhibits. You should not submit exhibits with the complaint. Instead, the relevant information should be paraphrased in the complaint. You should keep the exhibits to use to support or oppose a motion for summary judgment or at trial.

H. Change of Address. You must immediately notify the clerk and the opposing party or their attorney in writing of any change in your mailing address. Failure to notify the court of any change in your mailing address may result in the dismissal of your case.

I. Amended Complaint. If you need to change any of the information in the initial complaint, you must file an amended complaint. The amended complaint must be written on the court-approved civil rights complaint form. Rule 15(a) of the Federal Rules of Civil Procedure allows you to file one amended complaint prior to any defendant filing an answer. After any defendant has filed an answer, you must file a motion for leave to amend and lodge a proposed amended complaint. Local Rule of Civil Procedure 15.1(a)(2) prohibits any amended pleading from referencing any prior pleading. Further, any allegations or defendants not included in the

amended complaint are considered dismissed.

J. Letters and Motions. It is generally inappropriate to write a letter to any of the District Judges, Magistrates Judges, or the staff of any of the judicial officers. The appropriate way to communicate with these persons is by filing a written pleading or motion.

II. Completing the Civil Rights Complaint Form:

HEADING:

1. Your Name. Print your name, prison or jail inmate number, and mailing address on the lines provided.
2. Defendants. Print the names of each of your defendants. If you name more than **four** defendants, you should print the name of one defendant and "see additional page for defendants" in the space provided. On the additional page you must list the names of **all** of the defendants. This additional page should be inserted after page 1 and numbered as page "1-A" at the bottom of the page. The initial complaint must contain the names of **all** of the parties (plaintiffs as well as defendants) in the heading (or on the additional page if more than four defendants). See Rule 10(a) of the Federal Rules of Civil Procedure.
3. Jury Demand. If you want a jury trial, you must write "JURY TRIAL DEMANDED" on the line below "CIVIL RIGHTS COMPLAINT BY A PRISONER." Failure to do so will result in the loss of the right to a jury trial. A jury trial is not available if you are seeking only injunctive relief.

Part A. JURISDICTION:

1. Nature of Suit. Mark whether you are filing the complaint pursuant to 42 U.S.C. § 1983 for state, county, or city defendants; "Bivens v. Six Unknown Federal Narcotics Agents" for federal defendants; or "other." If you mark "other," identify the source of that authority.
2. Plaintiff. Print all of the requested information on the spaces provided. Identify the institution and city where the alleged violation of your rights occurred.
3. Defendants. Print all of the requested information about each of the defendants in the spaces provided. If you are naming more than four defendants, you must provide the necessary information about each additional defendant on a separate page. Label the page(s) as "2-A," "2-B," etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.

Part B. PREVIOUS LAWSUITS:

You must identify any other lawsuit you have filed in either state or federal court while you were a prisoner. Print all of the requested information about each lawsuit in the spaces provided. If you have filed more than three lawsuits, you must provide the necessary

information about each additional lawsuit on a separate page. Label the page(s) as "2-A," "2-B," etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.

Part C. CAUSE OF ACTION:

You must identify what rights the defendant(s) violated. The form provides space to allege three separate counts (one violation per count). If you are alleging more than three counts, you must provide the necessary information about each additional count on a separate page. Number the additional pages "5-A", "5-B", etc., and insert them immediately behind page 5. Remember that you are limited to a total of fifteen additional pages.

1. Counts. You must identify which civil right was violated. YOU MAY ALLEGE THE VIOLATION OF ONLY ONE CIVIL RIGHTS CLAIM PER COUNT.

2. Issue Involved. Check the box that most closely identifies the issue involved in your claim. YOU MAY CHECK ONLY ONE BOX PER COUNT. If you check the box marked "Other," you must identify the specific issue involved in the space provided.

3. Supporting Facts. After you have identified which civil right was violated, you need to state the supporting facts. Be as specific as possible. You must state what each individual defendant did to violate your rights. If there is more than one defendant, you need to identify which defendant did what act. You also need to state the date(s) on which the act(s) occurred if possible.

4. Injury. State precisely how you were injured by the alleged violation of your rights.

5. Administrative Remedies. Exhaustion of administrative remedies is a prerequisite to filing a civil rights complaint. 42 U.S.C. § 1997e requires prisoners to exhaust the available administrative remedies before being allowed to file a civil rights action. Consequently, you must disclose whether you have exhausted the inmate grievance procedures or administrative appeals for each count in your complaint. If one of your counts is exempt from the grievance procedures or administrative appeals, fully explain the exemption on the lines provided.

Part D. REQUEST FOR RELIEF:

Print the relief you are seeking in the space provided.

SIGNATURE:

You must sign your name and print the date you signed the complaint. Your signature must be an original signature, not a photocopy.

FINAL NOTE

You should follow these instructions carefully. Failure to do so may result in your complaint being stricken or dismissed by the court. All questions must be answered concisely

in the proper space on the form. If needed, you may attach no more than fifteen additional pages. The form, however, must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number the pages.

3. Name of first Defendant: _____. The first Defendant is employed as:
 _____ at _____
 (Position and Title) (Institution)

The first Defendant is sued in his/her: ☐ individual capacity ☐ official capacity (check one or both).
 Explain how the first Defendant was acting under color of law: _____

4. Name of second Defendant: _____. The second Defendant is employed as:
 _____ at _____
 (Position and Title) (Institution)

The second Defendant is sued in his/her: ☐ individual capacity ☐ official capacity (check one or both).
 Explain how the second Defendant was acting under color of law: _____

5. Name of third Defendant: _____. The third Defendant is employed as:
 _____ at _____
 (Position and Title) (Institution)

The third Defendant is sued in his/her: ☐ individual capacity ☐ official capacity (check one or both).
 Explain how the third Defendant was acting under color of law: _____

6. Name of fourth Defendant: _____. The fourth Defendant is employed as:
 _____ at _____
 (Position and Title) (Institution)

The fourth Defendant is sued in his/her: ☐ individual capacity ☐ official capacity (check one or both).
 Explain how the fourth Defendant was acting under color of law: _____

(If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.)

B. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? ☐ Yes ☐ No
2. If your answer is "yes," how many lawsuits have you filed? _____. Describe the previous lawsuits in the spaces provided below.
3. First prior lawsuit:
 - a. Parties to previous lawsuit:

Plaintiff: _____

Defendants: _____

- b. Court: (If federal court, identify the district; if state court, identify the county.) _____
_____.
- c. Case or docket number: _____.
- d. Claims raised: _____

_____.
- e. Disposition: (For example: Was the case dismissed? Was it appealed? Is it still pending?) _____
_____.
- f. Approximate date lawsuit was filed: _____.
- g. Approximate date of disposition: _____.
4. Second prior lawsuit:
- a. Parties to previous lawsuit:
Plaintiff: _____.
Defendants: _____
_____.
- b. Court: (If federal court, identify the district; if state court, identify the county.) _____
_____.
- c. Case or docket number: _____.
- d. Claims raised: _____

_____.
- e. Disposition: (For example: Was the case dismissed? Was it appealed? Is it still pending?) _____
_____.
- f. Approximate date lawsuit was filed: _____.
- g. Approximate date of disposition: _____.
5. Third prior lawsuit:
- a. Parties to previous lawsuit:
Plaintiff: _____.
Defendants: _____
_____.
- b. Court: (If federal court, identify the district; if state court, identify the county.) _____
_____.
- c. Case or docket number: _____.
- d. Claims raised: _____

_____.
- e. Disposition: (For example: Was the case dismissed? Was it appealed? Is it still pending?) _____
_____.
- f. Approximate date lawsuit was filed: _____.
- g. Approximate date of disposition: _____.

(If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.)

